

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Modernizing the E-rate Program for Schools and Libraries)	WC Docket No. 13-184
)	

COMMENTS OF THE CITY OF PHILADELPHIA

The City of Philadelphia (the “City”) submits these Comments on behalf of the Free Library of Philadelphia (“Library”), a City agency, in response to the Federal Communications Commission Notice of Proposed Rulemaking released July 23, 2013 (“*NPRM*”).¹ Headings below follow the general headings in the *NPRM*.

A. Ensuring Schools and Libraries Have Affordable Access to 21st Century Broadband

In its *NPRM*, the Commission has clearly indicated the dilemma of seeking to meet the growing demand for E-rate services, given the annual funding cap established at \$2.25 billion by the Commission in 1997, which after slight adjustment for inflation since 2010 has been set at \$2.38 billion for funding year 2013.² The needs of our nation’s schools and libraries have clearly outstripped the Commission’s 1997 projections, and the minor 2010 prospective inflation index adjustment to the cap has also proven wholly inadequate to provide sufficient funding required to ensure schools and libraries have affordable access to 21st century broadband. This is demonstrated by the Commission

¹ In the Matter of Modernizing the E-rate Program for Schools and Libraries, WC Docket No. 13-184, *Notice of Proposed Rulemaking* (rel. July 23, 2013) (*NPRM*).

² *NPRM* at ¶¶ 58-59.

itself, which reports that the volume of priority one requests alone has come to exceed the entire cap in both funding years 2012 and 2013.³ The Library therefore strongly urges a meaningful increase to the E-rate cap. Sufficient funding is particularly critical in order to assist libraries in building higher capacity Wide Area Network (“WAN”) and Internet services within major metropolitan areas. As the Library increases Internet speeds for its neighborhood services to accommodate increased patron use, its costs for Internet service are increasing at an unaffordable rate. Library wireless services also require increased bandwidth to meet patron needs, and with the same rapid cost increases.

The Commission has requested comment on connectivity metrics and appropriate goals and measurements for libraries, including target speeds for Internet connections, for WAN interconnections between libraries, and for in-building wireless networks within libraries.⁴ The Library supports adoption of a minimum broadband connectivity goal of 1 Gbps for all libraries, as recommended by the State Library of Kansas.⁵ The Library already provides Internet connectivity to its patrons at that speed. The City recommends the FCC consider a target date of 2017, rather than 2020 as proposed by the Commission; high-speed Internet access is a basic precondition for a broad range of library operations and services, and achievement of this speed is too critical a goal to defer until 2020.

The City also supports the adoption by the Commission of a WAN connectivity target for libraries of 100 Mbps and recommends that the target for such a goal be not later than 2016. The Library is on track to meet this goal by 2014 for connections between its branches. With respect to a goal for in-building wireless networks, while the City believes such networks are important, it is premature for the FCC to establish an internal

³ *NPRM* at ¶ 63.

⁴ *NPRM* at ¶¶ 25-27.

⁵ *NPRM* at ¶ 25, n.52 (citing Gates Foundation).

connectivity goal for libraries until the FCC first supports wireless connectivity as a priority one service on its E-rate Eligible Service List. Only if clear federal support for wireless connectivity is established should the Commission consider the appropriate standards and goals.

The Commission has requested comment on whether it should phase down E-rate support of certain services.⁶ The Library supports continuation of E-rate support for basic telephone service including local and long distance. Support for Internet access provided via cellular data plans, including air cards, also should be retained. The Library depends heavily on E-rate support for such cellular data plans to operate a mobile unit (“tech mobile”) that cannot be hardwired and currently reaches many Philadelphia neighborhoods without a physical Library presence. The “tech mobile” provides services that are vitally important to adults and school-age children in low income neighborhoods particularly, including training for email basics, resume writing and job searching, as well as sharing the power of computers for small business assistance, parenting resources, social networking and e-books. The Library cannot continue this service without E-rate funding for the cellular service it depends on.

The Commission has requested comment on possible changes to the discount rate matrix, including elimination of the 90% discount rate tier and doubling the minimum matching funds requirement from 10% to 20%.⁷ The Library is strongly opposed to any decrease in the highest tier 90% discount rate; this is the tier for schools and libraries serving the nations neediest districts, where over 75% of the students are eligible for free

⁶ *NPRM* at ¶¶ 90-102.

⁷ *NPRM* at ¶ 60 Fig. 1 (showing a chart of the current School and Library Discount Matrix); ¶¶ 117-25 (soliciting comment on proposals to change the discount rates); and ¶ 118 (stating the proposal to reduce the maximum discount level to 80%, and notes that some previous commenters suggested reducing the maximum discount to 70%).

or reduced price lunches through the National School Lunch Program. To cut costs at this tier would be to penalize the most vulnerable students, and to dramatically increase costs for those jurisdictions least able to afford it, at a time when local governments face eroded finances and are least able to bear additional costs. The Library's cost for eligible services in Fiscal Year 2013 was \$1,133,854. The Library was required by E-rate rules to fund 10% of that cost in addition to paying for ineligible equipment-related technology services. To double or triple the minimum local funding percentage would be a devastating increase in that funding burden and would have a severe impact on services to districts determined by objective criteria to be those most in need.

B. Maximizing the Cost Effectiveness of E-rate Funds

In an effort to increase transparency, the Commission seeks comment about current rules for soliciting and contracting for E-rate supported services, and specifically whether additional disclosure requirements concerning E-rate spending, service prices, and data on the use of funds would hinder or facilitate efficient spending and the quality of vendor services.⁸ The Commission requests comment on whether increasing transparency regarding technology service prices and costs, through such means as publishing costs online, or sharing costs with E-rate applicants, is likely to drive down prices.⁹ The number of potential service providers with the technical capacity to deliver comprehensive services at competitive prices to large entities like the Library is already limited. The effectiveness of spending is measured by the quality and availability of services provided, including high connectivity levels, adequacy of service desks, monitoring tools, and sufficient support staff. The Library believes that new initiatives

⁸ *NPRM* at ¶¶ 191-96.

⁹ *NPRM* at ¶¶ 191, 194-97.

by the Commission to collect and distribute service and pricing data could have an impact on the market for E-rate services, but that the positive impact would be proportional to the precision of service definitions matched with price information, to enable appropriate comparisons of services and prices. A necessary precondition for a useful new information system is that the Commission be forthcoming about how services are to be described and categorized, and that comments and active input be sought from the community of E-rate applicants as the Commission designs such an information system. Without careful attention to precise service descriptions allowing for meaningful comparison of services and prices, the new requirements could have the unintended consequence of decreasing the quality of services by spurring a race to the bottom as providers seek to match lowest published prices. However, with thoughtful collaboration with the applicant community on the design of the information system, the Commission could provide a useful tool. Of particular value is the notion of sharing actionable cost information freely with applicants, conditioned upon the ability to compare equivalent carefully defined services. It may be appropriate to house such information on the Universal Service Administrative Company (“USAC”) website in some form.

The Commission requests comment on whether increasing transparency regarding E-rate funded services offered by libraries and schools would be worthwhile, and if so, what is the least burdensome way to do that.¹⁰ The Library believes it is a worthwhile effort for the government to make available such information to the public. The least burdensome way to collect information on library use of E-rate services would be for an entity of the federal government knowledgeable about the applicable technology to evaluate the possibility of a “mash up” of currently-collected FCC data against data

¹⁰ *NPRM* at ¶¶ 192-93.

points that are already gathered by libraries for The Public Library Data Service report (an American Library Association report) or for the federal Institute of Library and Museum Services in an “open data” interface. Other annual reports available currently on the Internet may also be suitable sources of data. The Library urges the Commission to explore all facets of this possibility. The Commission may find that all of the data needed to create an accessible and detailed picture of E-rate funded services are currently being collected, available in database form and web-enabled, and merely need to be brought together. If any additional E-rate related data must be added, it should be kept to a clear and simple minimum.

The Commission requests comment on whether the Commission should offer various kinds of assistance to E-rate eligible entities, such as setting standards for service costs and providing technical assistance for network planning.¹¹ The Library believes that it could prove valuable for the Commission to convene economists, technologists and others knowledgeable about the communications industry to gather information and create a scaling cost model for use by applicants evaluating bids for E-rate services. The model would require full and careful descriptions of services as well as location and market forces. This effort might be complemented by identification of other similar models or resources created by other team of technical experts that could offer education and guidance for schools and libraries as they create, expand and evaluate their own networks. Such an effort might be valuable as an educational tool for applicants with some, but limited, in-house technical means. With further development and input from applicants, it might over time come to be relied upon by schools and libraries as a set of standards for both network operational levels and appropriate realistic costs. Applicants

¹¹ *NPRM* at ¶¶ 198-200.

with no technical resources would likely still benefit from the direct technical design expertise the Commission proposes, but many might be well served by the models alone.

The FCC has also asked whether certain applications or applicants should be exempted from the E-rate competitive bidding rules on the basis that they comply with state and local competitive bidding requirements, or use a state master service agreement.¹² The service requirements and competitive marketplace in each municipality vary significantly. Local bidding procedures are designed to satisfy local needs.

Applicants should be allowed to use these procedures or state master services agreements in place of FCC/USAC procedures that differ from, and may conflict with, local bidding laws, particularly since E-rate funds do not cover the entire cost of the service and the local or state entity is required to comply with its own bidding laws for the remaining portion. This would improve administrative efficiency and reduce the cost of the procurement process. Rather than imposing additional requirements on the competitive process, the FCC could publish guidelines – not requirements – with respect to pricing, service levels, and service definitions, which would help agencies identify reasonable pricing and take advantage of the competitive market.

The Commission has requested comment on the current competitive bidding process.¹³ The Library would welcome clarification from USAC with respect to what constitutes a responsive bid under USAC competitive bidding rules. In the Library's experience, following the posting of a solicitation on the USAC website for E-rate program services, vendors will often submit promotional information or other materials proposing services not in conformance with the services requested by the solicitation. It

¹² *NPRM* at ¶¶ 206-07.

¹³ *NPRM* at ¶ 202.

is frequently unclear whether or not such submissions must be regarded as legitimate, responsive bids eligible for consideration, and the Library believes further clarification is needed in order to avoid misunderstandings with USAC regarding adherence to its competitive bidding rules. There must be clear recognition that agencies receiving E-rate support must have the discretion to restrict consideration to responsive bids and reject nonresponsive submissions. Alternatively, USAC must provide much greater specificity as to how the review process is to be conducted and nonresponsive submissions weeded out. Without either, submitting bid evaluation criteria for review and possible second-guessing by USAC as has also been contemplated by the Commission¹⁴ will lead to delay, confusion, ineffective program administration, and in the worst case, an unjustified loss of funds. The Library also strongly supports streamlining the current USAC appeal process,¹⁵ in order to allow for timely redress of the errors that can occur in USAC administrative reviews.

C. Streamlining E-rate Administration

The Commission has requested comment on a variety of measures to streamline the administration of the E-rate program, including increasing the transparency of USAC processes, and invites suggestions for improvement of the Program Integrity Assurance (“PIA”) review process and commitment and disbursement processes.¹⁶ The Commission has requested comment on a number of other procedural changes, including instituting multi-year funding commitments, permitting certain additional direct disbursements to E-rate applicants, simplifying the Eligible Services List, and making changes in funding recovery procedures.

¹⁴ *NPRM* at ¶ 298.

¹⁵ *NPRM* at ¶¶ 266-69.

¹⁶ *NPRM* at ¶ 226.

The Library strongly supports the Commission or USAC improving status updates on funding applications throughout the E-rate application process, and their speeding the review of applications and issuance of commitment decisions. In particular, it is important that libraries receive advance notice of dates for the PIA review by USAC, so that staff schedules can be coordinated to better provide prompt answers to PIA questions and information requests. Without such notice, the Library has been hard pressed to provide adequate and timely responses, with the risk of being relegated to the back of the funding queue if it is unable to do so. Furthermore, it would be a boon to effective program administration if the entire funding process could be completed between the filing date and the July 1st start of the Library's fiscal year. This rarely takes place today. The Library supports the Commission's proposal to allow USAC to enter into funding commitments for multi-year contracts as a positive step toward rational administration of the E-rate program, but recommends that the proposed three-year maximum be replaced by a four-year maximum for such USAC commitments.¹⁷ Although currently applicants receiving E-rate support are permitted to enter into multi-year contracts with providers, they must file an annual application with USAC and go through the same review process because of the current rules prohibiting USAC from making multi-year funding commitments. The City's standard procurement rules provide for one-year contracts with options for an additional three one-year renewal periods, and the Library believes that it makes sense for USAC to provide funding commitments for the full duration of such contracts. Four-year commitments would greatly increase program effectiveness, by permitting stable, long-term planning, which the present regime of year-to-year funding definitely does not. PIA review of eligibility should be restricted to the initial funding

¹⁷ *NPRM* at ¶¶ 239-43.

year in the multi-year cycle. The administrative burden of repeated PIA reviews for every renewal period significantly increases costs for the funded agency, well beyond its apparent utility. The Library urges the FCC to review the fiscal benefit to the E-rate program of its one-year funding cycles against the considerable cost burden to funded agencies, and believes that such a review will show they are not cost effective for meeting the program's objectives.

The Library supports the Commission's proposal to simplify the Eligible Services List by removing the funding distinction between telecommunications services and Internet access services based on their regulatory classifications, and to allow applicants to seek eligible services from any entity.¹⁸ The Library also agrees with the Commission's finding that full recovery of disbursed funds is not warranted merely because program oversight or audit procedures result in classifying certain actions as procedural rule violations.¹⁹ Such determinations can be arbitrary and should not automatically lead to funding clawbacks, particularly where actions so classified are inadvertent or due to legitimate misunderstanding of complex rules.

The Commission has requested comment on its proposal to allow direct reimbursement of E-rate applicants which have chosen to pay directly to providers the full cost of E-rate services under the Billed Entity Application for Reimbursement ("BEAR") method, rather than to continue to require that such reimbursements be made to service providers and then passed on to the applicant in a second step.²⁰ The Library supports the Commission's proposal that disbursements be made directly from USAC to the funded agencies, because it improves efficiency.

¹⁸ *NPRM* at ¶ 248.

¹⁹ *NPRM* at ¶ 252.

²⁰ *NPRM* at ¶¶ 259-61.

D. Other Outstanding Issues

The Commission has requested comments on the applicability of the Children’s Internet Protection Act (“CIPA”) to devices not owned by E-rate recipients but brought onto the premises of libraries and schools, and to off-premises use of any Internet access devices that are owned by E-rate recipients.²¹ The Library fully supports the applicability of CIPA to Library-owned laptops and tablets that are used on Library premises. To the extent that user-owned devices operate on the Library’s wireless network, they will be subject to the CIPA-related filters in place for the Library’s network, but this should not result in the Library being subjected to any CIPA liability with respect to user-owned devices; such liability should be restricted to only Library-owned devices used on its own network. Further, the Library cannot control and should not be held liable for the use on its premises of user-owned devices on other wireless networks not provided or managed by the Library. It would be unwise and inevitably futile for the Library to police its patrons’ use of their own devices that are able to access the Internet by independent, third party wireless networks. If a patron does so on Library premises, the Library should not be subject to liability under CIPA.

The Commission seeks comment on the extension of E-rate support to cover wireless hotspot services, which are used off school or library property and are currently deemed ineligible because they are not deemed to be used for “educational purposes.”²² The Library strongly supports E-rate subsidies for community computing centers (“hotspots”). Forty to fifty percent of Philadelphia households lack broadband access and many do not have a computer. Most of these households are concentrated in areas of

²¹ *NPRM* at ¶¶ 271-75.

²² *NPRM* at ¶¶ 319-21.

poverty. Hotspots provide new computers and Internet access in existing community facilities. They serve a population that often does not use local libraries because of perceived barriers of language or education. The Library currently operates four hotspots and, since the program began in 2011, has operated as many as six. Each of the hotspots provides computers, Internet access, wi-fi, printers, and a selection of books free of charge, as well as staff – Digital Resource Specialists – to assist and train users. Hotspot visitors range from senior to preschoolers. They learn to use high-capacity technology to pursue a college education, obtain basic computing skills, explore online resources with their children, and apply for jobs. Hotspots are also satellites for library services within trusted and familiar neighborhood institutions like churches, urban gardening organizations and youth centers. They are well used by the community. From their inception through July of 2013 the hotspots have logged over 45,900 visits. The Library has been forced to operate hotspot programs without E-rate subsidy because they are not yet eligible, making it difficult for the Library to sustain and expand this program. The Library urges the FCC to expand E-rate eligibility to support these extremely valuable and effective resources.

Conclusion

The Library believes that high-capacity internet connectivity is the newest vital public utility. The E-rate cap should be meaningfully increased to reflect the great unmet need for broadband connectivity in the schools and libraries. Discount rates should not be changed in a way is disproportionately punitive to the nation's most needy districts at the 90% discount tier. The City of Philadelphia and the Free Library of Philadelphia respectfully urge caution in establishing rules that may have the unintended consequence

of hindering the Library's ability to provide services best suited for City residents. New rules should avoid imposing further reporting requirements but instead build upon existing databases. Rule changes should seek to reduce the administrative burdens of the program by allowing libraries which comply with local or state competitive bidding requirements, or are participating in state master service agreements to gain administrative efficiency, to be exempted from an additional layer of federal E-rate competitive bidding rules.

Dated: September 16, 2013

Respectfully submitted,

THE CITY OF PHILADELPHIA

By: /s/ Robert A. Sutton

Shelley R. Smith, City Solicitor
Michael C. Athay, Chief Deputy City Solicitor
Robert A. Sutton, Divisional Deputy
Mary Kate Bonner, Assistant City Solicitor
City of Philadelphia Law Department
1515 Arch Street, 17th Floor
Philadelphia, PA 19102

Attorneys for The City of Philadelphia